

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re K.M. et al., Persons Coming Under
the Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.M.,

Defendant and Appellant.

E056016

(Super.Ct.No. J224619,
J224620, J224621, J224622,
J228387)

O P I N I O N

APPEAL from the Superior Court of San Bernardino County. Barbara A.
Buchholz, Judge. Affirmed.

Mitchell Keiter, under appointment by the Court of Appeal, for Defendant and
Appellant.

Jean-Rene Basle, County Counsel, and Jamila Bayati, Deputy County Counsel, for
Plaintiff and Respondent.

I. INTRODUCTION

Defendant and appellant, A.M. (Mother), appeals from orders terminating her parental rights with respect to her five children. The orders were made at a hearing held pursuant to Welfare and Institutions Code section 366.26.¹ Mother argues the court erred in selecting adoption, not guardianship, as the permanent plan for the children. In particular, she contends the court failed to apply the beneficial parental relationship (§ 366.26, subd. (c)(1)(B)(i)) and sibling benefit (§ 366.26, subd. (c)(1)(B)(v)) exceptions to the statutory preference for adoption. We reject these arguments and affirm the court's orders.

II. SUMMARY OF FACTS AND PROCEDURAL HISTORY

A. *Initiation of Proceedings and Detention (November 2008)*

In November 2008, Mother had four children: A., B., D., and Ka. Their respective ages at that time were eight, five, four, and one years. The three older children are boys; Ka. is a girl.

The children first came to the attention of plaintiff and respondent, San Bernardino County Children and Family Services (CFS), in November 2008, when a social worker received a referral indicating that Mother and her husband, R.M. (Father), were drug addicts who neglect the children. The parents and children were living at the time with the children's paternal grandparents because the parents had lost their home. The referral

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

further indicated there was no food in the home and the parents allowed the children to urinate anywhere in the house.

The social worker learned from the paternal grandmother that the parents are “alcoholics,” and that Mother “‘sleeps all of the time’ and does not attend to the children’s needs like feeding them, bathing them, supervising them, taking them to school on time, etc.” The paternal grandmother also informed the social worker about a history of domestic violence between the parents, and said the parents will drive while intoxicated with the children in the car. She said the children will urinate outside, on the trash can inside the house, and on the furniture.

When the social worker met with the parents, Mother informed the social worker she was pregnant. She admitted drinking alcohol two or three days earlier. She told the social worker she has a history of depression and “‘was 5150’d”² in October 2008 for being a danger to herself and others.

Father admitted to “a very long history of abusing illegal narcotics,” but said he had been clean for almost 12 years. He now “smokes marijuana ‘here and there,’” and has found it difficult to quit drinking. He also said he has been incarcerated eight times on various charges.

On November 8, 2008, CFS filed juvenile dependency petitions concerning the four children pursuant to section 300. The petitions alleged the children came within the

² Under section 5150, a peace officer may, upon probable cause, take a person into custody for 72 hours for treatment and evaluation if the person, as a result of mental disorder, is a danger to others, or to himself or herself.

jurisdiction of the court based upon subdivision (b) of section 300 (failure to protect).

The allegations were based on Mother's alcohol abuse, Father's alcohol and marijuana abuse, Mother's mental health issues, and the parents' history of domestic violence. As to the two oldest children, CFS further alleged that the parents failed to provide appropriately for the children's educational needs.

Following a detention hearing, the court maintained the children in the parents' custody under numerous conditions, including that the parents: continue to reside in the paternal grandparents' home; cooperate with CFS and keep the agency advised of their whereabouts; inform CFS of any plan to have the children away from home for more than 24 hours; submit to random drug tests; and consume no alcohol or drugs inside the paternal grandparents' home and in the presence of the children.

B. Jurisdiction and Disposition (December 2008 – January 2009)

In a jurisdictional/dispositional report, CFS reported that the children "all appear to be happy and healthy," "within the normal developmental growth limits," and having "no known mental or emotional issues." "All the children also appear to be bonded and attached to the parents."

CFS recommended that the children be removed and placed in out-of-home care, and that the parents receive reunification services. The report states that Father has a substance abuse problem and appears to be in denial about the severity of the problem. Mother admits she has a substance abuse problem, but has not sought treatment. Nor has she addressed her mental health and domestic violence issues. Five-year-old B. told a

social worker that ““mommy and daddy don’t drink alcohol, and they don’t smoke and they don’t hit us, and they don’t do anything.”” When the social worker asked if the parents told him to say that, the child said, ““yes.”” Such coaching and manipulation, the social worker explained, “affects the children’s emotional well being.” The social worker believed that the parents needed to be actively enrolled in a substance abuse program.

In an addendum report filed in January 2009, CFS reversed its recommendation. The social worker reported that the parents “continue to test negative for alcohol and drug use,” are on a waiting list for family counseling, and attend Alcoholic Anonymous meetings twice each week. The report further states that the parents have not left the home for more than 24 hours at a time or been out past 9:00 p.m. with the children. The parents, according to CFS, “are motivated in working on their Case Plan goals that will allow the children to be maintained in their home. They appear to be motivated in starting counseling and parenting classes to address the issues that impair their ability to provide adequate care and supervision for the children.

At the jurisdictional and dispositional hearing, the court found the allegations in the petitions true and declared the children dependents of the court. The court ordered the children maintained in the parents’ custody on family maintenance.

C. Six-month Review Period (January 2009 – July 2009)

In a status review report dated May 22, 2009, prepared for the six-month review hearing, CFS recommended that the children remain in the parents’ custody under family maintenance.

The social worker reported that the family receives support from maternal and paternal extended families. The “children present with healthy attachment toward both parents,” and the social worker observed “loving and appropriate” parent-child interactions.

Other than asthma, the children had no medical problems. The social worker noted no developmental problems.

A., who was nine years old at the time, expressed concern for his family’s involvement with the child welfare system. He liked to be present during social worker contacts and would attempt to promote his parents’ good behavior. At the review hearing, the court expressed concern that A. was becoming parentified. The court explained to the parents that this means the child “is being more of a parent to you than you are to him.”

Mother returned negative drug tests twice monthly. She stopped testing when she was admitted into the hospital for a high risk pregnancy. This also made it difficult for Mother to fully participate in the services offered. The social worker stated that Mother demonstrated responsibility by accepting the consequences of her actions and by actively participating in services until her medical condition prevented her from continuing.

Father’s attendance in family counseling services was inconsistent, then ended when he returned a positive test for alcohol and marijuana in February 2009. He did not attend substance abuse classes or provide drug tests after March 5, 2009. He explained

that he could not make it to classes because he did not have child care services while Mother was in the hospital. He was attending a domestic batterers' treatment program.

At the review hearing, the court ordered that the children remain on family maintenance status.

D. Juvenile Dependency Petition, Detention, Jurisdiction, and Disposition Regarding Newborn Kh. (July 2009 – October 2009)

The parents' fifth child, Kh., was born two months premature in May 2009. There were no drugs or alcohol detected in the child at birth.

Kh. was discharged from the hospital on July 23, 2009. One week later, CFS filed a juvenile dependency petition concerning her under section 300. The petition was based on allegations under section 300, subdivisions (b) (failure to protect) and (j) (neglect of siblings). The subdivision (b) allegations were based on the parents' history of substance abuse and Mother's mental health issues. The subdivision (j) allegations were based on the fact that the other four children were receiving family maintenance services due to the parents' substance abuse.

The detention report regarding Kh. noted that Mother had previously participated in an outpatient drug treatment program and is on a waiting list for counseling services. She had recently tested negative for drugs and alcohol. Father had been terminated from a substance abuse program due to poor attendance and had not submitted a drug test in four months.

At the detention hearing, the court ruled that Kh. could remain in the parents' custody on conditions similar to those imposed with respect to the detention of the other children.

In a jurisdictional/dispositional report concerning Kh., CFS noted that Mother tested negative for drugs and alcohol at the time of the detention hearing, but Father tested positive. CFS recommended the child be maintained in the home under family maintenance services.

At the jurisdictional and dispositional hearings held in September 2009, the court found the allegations of the petition true and declared Kh. a dependent of the court. She was to remain in the parents' custody on the condition the parents reside with the paternal grandparents. The parents were ordered to submit to drug tests and to participate in their case plans.

In an interim review report filed in October 2009, CFS reported that both parents were participating in family counseling services. Mother was participating in an 18-month alcohol program pursuant to a condition of probation related to a 2008 conviction for driving under the influence. The program also satisfied a requirement of her case plan. All her drug tests were negative. Father was also on probation for driving under the influence and driving while his license was suspended. He was sentenced to a period of house arrest and was participating in a drug treatment program and subject to random drug tests. He tested positive for marijuana on the date of Kh.'s

jurisdictional/dispositional hearing. Subsequent tests were negative. He was also attending a domestic violence program.

*E. Mother and Children Move to Maternal Relatives' Home; 12-month Review
(December 2009 – January 2010)*

In December 2009, Mother informed a social worker that she had moved from the home of the paternal grandparents, citing the stress of living with her in-laws. She moved in with relatives at a home in San Bernardino. CFS sought an order approving the move. Father, through his counsel, objected to the proposed order. A hearing on the issue was set for the date of the next scheduled review hearing.

In a status review report filed in January 2010, CFS reported that Mother was complying with the terms of her probation. Father had been arrested for disorderly conduct, and CFS did not know whether he was attending his treatment program.

According to the social worker, Mother “is doing her best to ensure that the children are, safe, happy, and secure.” By moving to a different home, Mother is “looking out for the best interest of her family.” CFS recommended continued family maintenance status.

At the review hearing, the court allowed the children to remain in Mother’s custody. A settlement conference and further review hearing were set as to Father’s objection to Mother’s and the children’s move.

F. Supplemental Dependency Petition and Removal of Children from Father (February 2010 – March 2010)

In February 2010, CFS filed supplemental dependency petitions pursuant to section 387 based upon Father's abuse of alcohol and marijuana, his failure to submit to random drug testing, and his failure to participate in an alcohol and drug program. CFS sought the removal of the children from Father and their continued maintenance with Mother. Following a detention hearing, the court agreed with CFS. The court also ordered supervised visits between the children and Father.

In a jurisdictional/dispositional report, CFS noted that Mother and the children were living in the home of maternal relatives. Mother, the social worker stated, "has been the primary caretaker for the children and will continue to function as such. The children do not appear to be affected by [Father's] absence from the home."

At the jurisdictional/dispositional hearing on the supplemental petition, the court found the allegations true and removed the children from Father.

G. Supplemental Dependency Petition—Removal from Mother (June 2010 – August 2010)

In June 2010, CFS filed supplemental dependency petitions pursuant to section 387 based upon: Mother's history of alcohol abuse; her recent use of alcohol and methamphetamine; her failure to drug test on three dates in April and May 2010; and Mother allowing A. to remain with relatives who were not approved by CFS.

In a June 2010 detention report, CFS stated that Mother was not complying with her case plan, had not consistently attended her “DUI program,” and had not appeared for random drug testing on three occasions. She admitted to using alcohol and methamphetamine within the preceding three weeks. A. was allowed to stay with a relative who had not been approved by CFS. Mother told social workers she was not able to take care of the children and that it would be best if the children were placed with her relatives. CFS sought the removal of the children from Mother.

At the detention hearing, the court removed the children from Mother’s custody. The three boys were placed with a maternal cousin in Colton with whom they “have always had a relationship.” There are two other children in the home of similar ages. The boys told the social worker they like living with their cousins.

Three-year-old Ka. was placed with a maternal cousin in San Bernardino. She “is also adjusting well to her placement.” The caregiver has a two-year-old granddaughter in the home; thus, Ka. “now has a female playmate of the same age,” and the two children “get along well with each other.”

The infant, Kh., was placed with a maternal great-aunt and great-uncle in San Bernardino and is also adjusting well to the placement.

Mother is reportedly homeless and living at the family’s party rental business. The employees at the business supply her with methamphetamine.

At the jurisdictional/dispositional hearing, the court found the allegations true and removed the children from Mother. It further ordered reunification services be provided to Mother and supervised visits between Mother and the children at least once per week.

H. Six-month Review Hearings (September 2010 – February 2011)

In September 2010, both parents were living at their place of business. According to the social worker, their “relationship continues to be problematic, chaotic and borderline cruel.”

The children are meeting developmental milestones and function well as a sibling group. “They take care of each other” and “love being around their relatives.” The various caretakers for the children report that the children get along with other children and have adjusted well. A., the oldest boy, is reportedly “taking on a parental role.”

At a review hearing in September 2010, the court ordered continued family reunification services, approved the children’s placements, and set a further section 366.21, subdivision (e) review hearing for February 2011 to give the parents at least a full six months of reunification services in the review period.

In a report filed in January 2011, CFS reported that the parents continued to engage in domestic violence. Mother admitted drinking alcohol and using pain killers to cope with her situation.

The report further noted that the boys appear to be adjusting well to their placement and feel safe there. According to the social worker, the “children make statements like, ‘We don’t get spanked anymore. Now we get consequences.’” A. told

the social worker that he likes his current placement, and stated: ““When we live with my first mom and my first dad[,] I did not like my dad’s friends and my mom would drink a lot. I feel safe with my second mom and second dad.”” B., then seven years old, appeared to have negative memories about living with his parents and told the social worker that “he likes his placement as they are nice to him and he does not have to miss school anymore.” Ka. has bonded well with her caregivers, and Kh. has adjusted well to her placement.

The parents have weekly visits. The social worker reported that the parents are appropriate during visits, although they seem to favor the younger children.

In light of the parents’ failure to complete their case plans and their ongoing domestic violence issues, the social worker opined that the prognosis for reunification was poor.

At the review hearing in February 2011, the court ordered continued reunification services and maintained the children in their relative placements.

I. Termination of Services (August 2011)

In July 2011, CFS recommended that reunification services for Mother and Father be terminated. In its status review report, CFS noted that despite 32 months of family maintenance and reunification services, the parents have not made significant progress in their case plans, continue to engage in domestic violence, and failed to demonstrate “their ability to live a life free from drugs and alcohol.”

The parents have been compliant regarding weekly visitation, although the social worker believed that they were “under the influence” during a couple of visits. Mother “tested positive” on the same day as one of the visits. The social worker observed that the children leave the visits “with their caregivers without a problem” and the “siblings have a strong bond among each other.”

CFS reported that the children are doing well in their respective placements and developed strong bonds with their relative caregivers and refer to them “as ‘mom’ and ‘dad.’” The boys indicated they feel safe and talked about their placement as their home. Ka. “has become part of the [relatives’] family,” while two-year-old Kh. “has become the princess of the house.” Although the five children are in three different homes they have the opportunity to get together during holidays and family gatherings.

Following a contested hearing, the court found that the parents had failed to participate regularly and make substantive progress in their case plans and their progress in alleviating the causes necessitating placement was minimal. The court terminated services for the parents and set a hearing to determine a permanent plan to be held pursuant to section 366.26. The children were to remain in their current placements.

J. Section 388 Petitions and Section 366.26 Hearing (December 2011 – January 2012)

In its report regarding the section 366.26 hearing, CFS stated that each of the children are appropriate for adoption, the children recognize the relative caregivers as parental figures, and their caregivers wish to adopt. “Their adoption by their current caregiver[s] will allow the children to remain with family and somewhat together.”

The caregivers for the three boys, a maternal cousin and her husband, have known the children since the children were born. They told the social worker: ““We love [the boys], we have a loving relationship, we communicate well, we respected them and they respected us.”” CFS further reported that the boys (ages 11, 8, and 7 at this time) have a strong bond with the caregivers, feel comfortable in the home, and have the benefit of being placed together. When asked about adoption, the boys responded: ““Since we can[’t] live with our parents, we are happy about being adopted.””³

Four-year-old Ka. is cared for by another maternal cousin and her husband. They have known Ka. since her birth. The caregivers told the social worker that Ka. ““is family and we love her just as we love our own birth children. We are a good loving relationship.”” They want to adopt Ka. because ““she is family and we want to provide for her.””

The caregivers for the youngest child, Kh., are a maternal great-uncle and great-aunt who have known Kh. since her birth. They told the social worker that they have ““bonded with [Kh.], but we try to not be over protective,”” and that they ““are happy that we are able to keep her in the family.”” They said they want to adopt Kh. because ““[w]e love her, we have been with her. We want to raise her and provide safety and security for her.””

³ Although the report states, “Since we *can* live with our parents . . . ,” CFS and Mother both agree that the context of the statement indicates that this is a typographical error and that the report should read, “Since we can’t live with our parents”

The social worker observed that Ka. and Kh. (who were too young to understand the concept of adoption) are “secure and well adjusted,” and each seeks out their caregivers “for comfort and affection, with an obvious expectation that [their] needs will be met.””

Regarding visits among the siblings, CFS noted: “It is appropriate that the children are placed with relative caregiver[s], as this was the best solution to maintain sibling contact and relationship. All the relative caregivers have been counseled on the importance of maintaining family ties and siblings’ relationship; therefore they will assist the children in developing relationships with any of their birth family members if it is deemed appropriate.”

CFS’s report concludes: “The relative caregivers are dedicated to [the children] and committed to raising them to adulthood. It is recommended that the children be freed from their birth parents in order to be placed for adoption with their prospective adoptive parents/relatives caregivers.”

In January 2012, each parent filed a request to change court order pursuant to section 388 (388 petitions). They sought the return of the children to their custody or, alternatively, additional family reunification services. CFS opposed the requests. Although CFS acknowledged that the parents had “made some effort in completing after care treatment,” CFS noted that the parents’ extensive substance abuse history continues to be a concern, and the parents continue to minimize their domestic violence issues.

According to the social worker, “the parents are not ready to face reality and accept responsibility for their actions.”

Following a hearing on the section 388 petitions, the court denied the requests.

At the section 366.26 hearing, A. (who was 11 years old at the time) testified. In responses to questions from Mother’s counsel, A. testified that he understood that “adoption is like . . . legal guardians. That my real mom and dad would not have my care no more” He knew that his relative caretakers would be adopting him, and considers them to be like parents. When asked if he wished to be adopted, A. responded, “Yes. Yes, Sir.” He was then asked if he was still willing to be adopted if there was a risk that he would not be able to see his parents any more. A. said, “No. Because, because I been adopted away from my mom and dad doesn’t mean I don’t love them. I still love them.” He added that he would be willing to be adopted if he could see Mother and Father “at least once a week.”

A.’s counsel asked A., “Do you want to stay with the [relative caregivers’] family for the rest of your childhood and be their child?” A. answered, “Yes, I want to go with the [relative caregivers’] family.” He further testified that he loved the relative caregivers and sees them as his parents.

When Father’s counsel asked A. if he would still want adoption if the relative caregivers’ would not allow him to have contact with his “real parents,” A. said, “Yes.”

Following argument, the court found the children were adoptable, that adoption was in their best interests, and that there was no exception to adoption that applied in this

case. Regarding the bond between A. and the parents, the court stated: “The court didn’t see a parent child bond such that the attachment would be detrimental to the minors if parental rights were terminated. In fact, [A.] seemed to be pretty clear that he was very happy with his current life and his current circumstances. And, while he does have and will probably continue to have affection for his parents, that does not outweigh the need for permanence in this situation.” After making other applicable findings, the court terminated the parents’ parental rights.

Mother appealed.

III. DISCUSSION

A. *The Beneficial Parental Relationship Exception to Adoption*

At a section 366.26 hearing, the juvenile court determines a permanent plan of care for a dependent child. (*In re Celine R.* (2003) 31 Cal.4th 45, 52-53; *In re Casey D.* (1999) 70 Cal.App.4th 38, 50.) Adoption is the permanent plan preferred by the Legislature. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.) “‘Only if adoption is not possible, or if there are countervailing circumstances, or if it is not in the child’s best interests are other, less permanent plans, such as guardianship or long-term foster care considered.’ [Citation.]” (*Id.* at p. 574.)

“Once the court determines the child is likely to be adopted, the burden shifts to the parent to show that termination of parental rights would be detrimental to the child under one of the exceptions listed in section 366.26, subdivision (c)(1).” (*In re S.B.* (2008) 164 Cal.App.4th 289, 297.) In this appeal, Mother argues that two such

exceptions apply: (1) the beneficial parental relationship exception under section 366.26, subdivision (c)(1)(B)(i); and (2) the sibling relationship exception under section 366.26, subdivision (c)(1)(B)(v). As discussed below, Mother has forfeited the sibling relationship argument because it was not raised below. We will therefore focus our discussion on the beneficial parental relationship exception.

The beneficial parental relationship exception applies when there is “a compelling reason for determining that termination would be detrimental to the child” because the parent has “maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) To show that the exception applies, the parent must show that the parent-child relationship “promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827, quoting *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

In reviewing challenges to a trial court’s decision as to the applicability of an exception to adoption, we will employ the substantial evidence or abuse of discretion

standards of review depending on the nature of the challenge. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1315-1316.) We will apply the substantial evidence standard of review to evaluate the evidentiary showing with respect to factual issues. (*Id.* at p. 1315.) However, a challenge to the trial court's determination of questions such as whether there is a compelling reason for determining that termination of parental rights would be detrimental to the child "is a quintessentially discretionary determination." (*In re Scott B.* (2010) 188 Cal.App.4th 452, 469.) We review such decisions for abuse of discretion. (*Ibid.*) In the dependency context, both standards call for a high degree of appellate court deference. (*Ibid.*; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.)⁴

In arguing that the court erred in failing to apply the beneficial parental relationship exception, Mother makes the following points: Mother visited weekly with the children and the quality of the visits was "sufficient"; the boys' ages and the percentages of their lives spent with Mother support finding a beneficial parental relationship; and A.'s testimony indicates he had a positive relationship with his parents.⁵

⁴ As the *In re Jasmine D.* court noted: "The practical differences between the two standards of review are not significant. '[E]valuating the factual basis for an exercise of discretion is similar to analyzing the sufficiency of the evidence for the ruling. . . . Broad deference must be shown to the trial judge. The reviewing court should interfere only "'if [it] find[s] that under all the evidence, viewed most favorably in support of the trial court's action, no judge could reasonably have made the order that he did.' . . .'" [Citations.]'" (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351.)

⁵ Mother's argument is framed by the identification of factors set forth in *In re Angel B.* (2002) 97 Cal.App.4th 454, 468 and *In re Jason J.* (2009) 175 Cal.App.4th 922, 937 and 938. These factors determining whether a parent-child relationship is important and beneficial are: "(1) the age of the child, (2) the portion of the child's life spent in the

[footnote continued on next page]

Here, CFS does not dispute that Mother satisfied the threshold requirement of maintaining regular visitation with her children. CFS also appears to concede, as least as to the older boys, that the boys' ages and the portions of their lives spent with Mother are factors that support the application of the beneficial parental relationship here. CFS, however, argues that other considerations weigh against application of this exception here.

Initially, we note that Mother offers no facts to support the point that any of the children other than A. have a positive relationship with Mother; she relies entirely upon A.'s testimony. In particular, she points to A.'s testimony that he considered Mother and Father his "real mom and dad" and his "first parents." In addition, we note A.'s testimony that he loves his parents and wants to continue visits with them.

However, even if A. (and the other children) have a beneficial relationship with Mother and would benefit from continuing the parent-child relationship, the court must still select adoption as the permanent plan unless it finds there is a compelling reason for determining that termination of parental rights would be detrimental to the children. (§ 366.26, subd. (c)(1)(B)(i).) This means that, in order to "overcome the preference for adoption and avoid termination of the natural parent's rights, the parent must show that severing the natural parent-child relationship would deprive the child of a *substantial*,

[footnote continued from previous page]

parent's custody, (3) the positive or negative effect of interaction between the parent and the child, and (4) the child's particular needs.' [Citation.]" (*Ibid.*)

positive emotional attachment such that the child would be *greatly* harmed.” (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 466.)

The required compelling reason for a finding of detriment—i.e., evidence the children would suffer great harm—is absent. Indeed, Mother offers no facts or argument that any of the children would be harmed by severing the parent-child relationship. Although A. expressed his love for his Mother, it is also clear from his testimony that he welcomes the prospect of being raised by his prospective adoptive parents. He said he preferred to “be the child of the [prospective adoptive parents]” because, as he stated, “I know in the future I can get a scholarship and go to college. And my grades would be good. My life would be better too.” He loves the prospective adoptive parents and views them as his parents. When asked if he felt they would make the right choice for him, he said, “Yes. They’ve been doing that ever[] since I was living with them.” Although his answers were arguably inconsistent as to whether he wanted to be adopted if he could no longer see Mother and Father, there is nothing in his testimony or elsewhere in the record to suggest that the severing of ties with his parents would cause him any harm. The other boys also indicated they were “‘happy about being adopted.’”

Mother relies heavily on *In re Amber M.* (2002) 103 Cal.App.4th 681. In that case, the Court of Appeal held that the trial court erred when it found that the beneficial parental relationship exception did not apply. (*Id.* at p. 691.) In *In re Amber M.*, there was evidence by a psychologist that the mother and the dependent child “shared ‘a primary attachment’ and a ‘primary maternal relationship’ and that ‘[i]t could be

detrimental’ to sever that relationship.” (*Id.* at p. 689.) In addition, a court-appointed special advocate disagreed with the agency’s recommendation of adoption due to the bond and love between the mother and child. (*Id.* at pp. 689-690.) Here, by contrast, there was no evidence that termination of Mother’s parental rights would be detrimental to the children.

Finally, Mother argues that the “legal argument for guardianship is also stronger here.” She asserts that the selection of guardianship previously required an affirmative finding that termination of parental rights would be detrimental to the child, but that the Legislature abrogated this restriction in 2008. She cites to a statement in *In re S.B.*, *supra*, 164 Cal.App.4th at page 300, footnote 10. *In re S.B.* refers to section 366.26, subdivision (c)(1)(A). The referenced subdivision provides an exception to adoption that applies when the “child is living with a relative *who is unable or unwilling to adopt the child . . .*, but who is willing and capable of providing the child with a stable and permanent environment through legal guardianship, and the removal of the child from the custody of his or her relative would be detrimental to the emotional well-being of the child.” (§ 366.26, subd. (c)(1)(A), italics added.) This section does not apply because the relative caregivers in this case are able and willing to adopt the children. Mother’s argument on this point is without merit.

As noted above, Mother had the burden to establish the applicability of the beneficial parental relationship exception in the trial court; on appeal, she has the burden

of showing that the trial court's ruling was an abuse of discretion. We conclude that Mother has failed to meet this burden.

B. Forfeiture of Sibling Relationship Exception Argument

On appeal, Mother argues that the sibling relationship exception applies in this case. As CFS points out, Mother did not raise this argument below. CFS argues that Mother has therefore waived the argument on appeal. Mother did not respond to CFS's waiver argument in her reply brief. We agree with CFS.

Facing a similar situation, the Court of Appeal in *In re Erik P.* (2002) 104 Cal.App.4th 395 stated: "The application of any of the exceptions enumerated in section 366.26, subdivision (c)(1) depends entirely on a detailed analysis of the relevant facts by the juvenile court. [Citations.] If a parent fails to raise one of the exceptions at the hearing, not only does this deprive the juvenile court of the ability to evaluate the critical facts and make the necessary findings, but it also deprives this court of a sufficient factual record from which to conclude whether the trial court's determination is supported by substantial evidence. [Citation.] Allowing the [parent] to raise the exception for the first time on appeal would be inconsistent with this court's role of reviewing orders terminating parental rights for the sufficiency of the evidence. Therefore, the [parent] has waived his right to raise the exception." (*Id.* at pp. 402-403.)

Because Mother did not raise the sibling relationship exception below, she has waived or forfeited the argument on appeal.

IV. DISPOSITION

The orders appealed from are affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

KING
J.

We concur:

RAMIREZ
P. J.

HOLLENHORST
J.